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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1954

No. [redacted] 97

ALBERT J. DEMELLE, doing business as CURLEY'S TRANSPORTATION COMPANY, *Petitioner*

v.

INTERSTATE COMMERCE COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Albert J. Demelle, doing business as Curley's Transportation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on February 23, 1955. (R. 45)

OPINIONS BELOW

The opinion of the District Court (R. 26-30) is reported in 124 Fed. Supp. 514 (D.C.-Me.). The opinion of the United States Court of Appeals (R. 39-45)[1] is reported in 219 Fed. 2nd 619.

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[1] Record references to certified record from Court of Appeals and up to May 9, 1955.

JURISDICTION

The judgment of the United States Court of Appeals was entered February 23, 1955. (R. 45) The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

(1) Is the Certificate issued to petitioner under the so-called "grandfather" clause of Section 206(a), Part II, Interstate Commerce Act, subject to a collateral attack in a proceeding under Section 222(b) of the same Act?

(2) Whether the judicial opinion, without investigation and order by the Interstate Commerce Commission, places power in the Commission to revoke in part any certificate in which its language calls for interpretation?

(3) Whether judicial limitations upon the use of a certificate and without investigation by the Commission of its own order does not deprive the holder of the certificate of property without due process of law?

(4) Does the decision of the Court of Appeals interpreting a "grandfather" certificate issued October 1938, with reference to authority purchased in August 1946, and issued in a Certificate dated June 13, 1949, pave the way for revocations of "grandfather" rights based upon subsequent purchases or extensions of operating authorities?

STATUTES INVOLVED

The pertinent statutory provisions are printed in Appendix A, *infra*, 1a-4a.

STATEMENT

A complaint was filed as provided by Section 222(b), Part II, Interstate Commerce Act, in the District Court of the United States for the District of Maine, Southern Division, by the Interstate Commerce Commission against Albert J. Demelle, doing business as Curley's Transpor-

tation Company, on May 25, 1954 (R. 1, 3-10). The complaint alleged violations of a certificate first issued to petitioner October 17, 1938, reissued June 4, 1941, and June 13, 1949 (R. 6, 20-26). The violations in question constituting common motor carrier operations to and from points in the State of Maine, lying "on and east of U.S. Highway 1" (R. 8-10, Ex. A). Petitioner answered that the complained of operations were conducted within the scope of his certificated authority (R. 11, 13-16). Thereafter complainant filed a Motion for Summary Judgment and argument was held on said motion (R. 17). The only evidence received were the three Certificates issued by the Commission to petitioner. After oral argument the district court interpreted the certificate as requested by the Commission, found petitioner to be operating without authority, and ordered petitioner enjoined from such further operations.

October 6, 1954, appeal was taken to the court below and on October 29, 1954, the injunction was stayed (R. 30-32). The court below affirmed the judgment of the district court and on March 28, 1955, the injunction again became effective.

REASONS FOR GRANTING THE WRIT

1. The Certificate or operating authority in question reads as follows:

> "IRREGULAR ROUTES:
>
> General commodities, with exceptions as specified on sheet No. 1,
>
> Between points and places within 20 miles of Boston, Mass., Providence, R. I., and Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1,"

It was first issued to petitioner October 17, 1938. The authority was issued pursuant to the so-called "grandfather" provisions of Section 206(a), Part II, Interstate Commerce Act[2] (R. 11, 13, 18). Subsequently, additional authority was purchased, including the right to operate a "Regular Route" over U. S. Highway 1 running through the 20-mile radius of Sanford, Me. Proceeding under § 222(b) of the Act the Commission has attacked this certificate by its contentions that the "Irregular Route" authority is delimited by the subsequently acquired "Regular Route" authority. That such contention influenced the court below is plain from the opinion (R. 43). Section 208(a) of the Act provides that certificates must specify the territory to be served (R. 8). Section 212(a) of the Act provides that this "Irregular Route" authority may not be revoked except for causes not evident in this proceeding. If the thousands of "grandfather" certificates issued to motor carriers are to be subject to such an attack and whittled down because of subsequent purchases of unrelated operating rights, the Act then affords no protection to the valuable property rights a carrier has in his certificate.

2. The Commission conducted no investigation of the scope or intent of this Certificate. There is no formal action of record to indicate that the Certificate has ever been the subject of perusal by the Commission. Section 212(a) would preclude a rewriting of the certificate as suggested by the District Court (R. 29). The decision of the court below affirms in the Commission the power to obtain a revocation through the medium of Section 322(b).

3. A certificate authorizing interstate motor carrier operations is a unique property right. Compare *Marion Trucking Company, Inc.*, v. *Harwood Trucking, Inc.*, et al., 116 N.E. (2d) 636 (Ind. App.). Petitioner is entitled to protection of this right as provided in the 5th Amendment of the Constitution. The Action of the District Court, af-

[2] Hereinafter referred to as the Act.

firmed by the court below, will deprive petitioner of that right without due process. That is without an investigation by the Commission and a formal interpretation of its own order. Had the Commission investigated this Certificate it could never have put in a report the language used by the court below (R. 43) which so clearly points to a misunderstanding of petitioner's "grandfather" rights as compared with its purchased authority. (See note #R. 26). Thus petitioner is proceeded against, not by a formal investigation of his certificate, but in a suit under Section 322(b) which was designed to enjoin operations found to be illegal. This procedure robs petitioner of his rights in his certific[illegible] without the due process which would dictate an investigation by the body empowered by Congress to issue the certificate. Compare *Transportation Activities of Tornetta*, 48 M.C.C. 637.

4. In *Transportation Activities of Brady Transfer & Storage*, 47 M.C.C. 23, affirmed 80 F. Supp. 110 (D.C.-Ia.), affirmed per curiam *Brady Transfer & Storage Company* v. *U. S.*, 335 U.S. 875, 69 S. Ct. 239, the Commission plainly set forth the distinctions between regular and irregular route operating rights. Petitioner was granted irregular route authority and later purchased regular route authority. The decision of the court below casts doubt upon his "grandfather" rights because he purchased additional authority some eight years after such rights were granted. Motor carriers cannot purchase or extend their rights with any security if such moves are to be held to jeopardize or cancel their existing rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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